

Attorney Docket No.: ARO-00001-CPA (formerly 209406-84004)

REMARKS

Claims 1, 2 and 4-18 are pending in the application. By this Amendment, Claims 1 and 10 are amended. Favorable reconsideration is respectfully requested in light of the following Remarks.

1. The Office action rejects Claims 1, 2 and 4-18 under 35 U.S.C. §103(a) over Berg (U.S. Patent No. 5,891,937, hereinafter "Berg") in view of Peiffer (U.S. Patent No. 5,064,407, hereinafter "Peiffer"). The rejection is respectfully traversed.

Peiffer discloses a method of manufacturing a cellulose absorbent product consisting of corn cob components comprising the chaff (91-96%) and pith (1-4%) with only a minor amount of woody ring (3-5%). *See col. 2, lines 36-42.*

Berg discloses an absorbent material made from corn residue having a moisture content less than about 10%. *See col. 3, lines 16-18.*

By this Amendment, Claims 1 and 10 are amended to include the feature that the absorbent material comprises a carrier *consisting essentially of* particles obtained from a woody ring and a chaff ring of a corn cob. In *In re Garnero*¹, the C.C.P.A. has ruled that the phrase "consisting essentially of" excludes "*additional unspecified ingredients which would affect the basic and novel characteristics of the product defined in the balance of the claims.*"² This meaning was discussed by the Patent Office Board of Appeals in *Ex parte Davis* as a "code" adopted by a group of Primary Examiners for their guidance.³ It is respectfully submitted that the Examiner adopts this "code" in the present application.

According to *MPEP* §2143, to establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Linter*, 458 F.2d 1013, 173 USPQ 560, 562 (CCPA 1972). Second, there must be a reasonable expectation of success. *In re Merck &*

¹ 162 U.S.P.Q. (BNA) 221, 223 (C.C.P.A. 1969).

² *Water Technologies Corp. v. Calco Ltd.*, 7 U.S.P.Q.2d (BNA) 1097, 1102 (Fed. Cir. 1988); *In re Herz*, 190 U.S.P.Q. (BNS) 461, 463 (C.C.P.A. 1976); *MPEP* §2111.03.

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Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Finally, the applied reference must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

It is respectfully submitted that the Office action fails to establish a *prima facie* case of obviousness because at least the feature that the absorbent material comprises a carrier *consisting essentially of* particles obtained from a woody ring and a chaff ring of a corncob, as recited in amended Claims 1 and 10, is not disclosed, taught or suggested in the applied art.

For at least this reason, Claims 1 and 10 are allowable over the applied art. Claims 2 and 4-9, which depend from Claim 1, and Claims 11-18, which depend from Claim 10, are likewise allowable over the applied art. Withdrawal of the rejection is respectfully requested.

2. The Office action rejects Claims 5-8 and 14-17 under 35 U.S.C. §103(a) over Berg and Peiffer, and further in view of Dickey (U.S. Patent No. 4,519,340, hereinafter "Dickey"). The rejection is respectfully traversed.

Dickey discloses an absorbent composition comprising chopped corn stalks mixed with lime, wood shavings, and a deodorizing substance. *See col. 4, lines 27-32.*

Claims 5-8 depend from Claim 1, and Claims 14-17 depend from Claim 10. By this Amendment, Claims 1 and 10 are amended to include the feature that the absorbent material comprising a carrier *consisting essentially of* particles obtained from a woody ring and a chaff ring of a corncob. As mentioned above, there is no mention in Berg or Peiffer of at least this feature. Dickey adds nothing to overcome this shortcoming in Berg and Peiffer. Thus, the combination of Berg, Peiffer and Dickey does not include all the claim limitations, as recited in Claims 1 and 10, and the Office action fails to establish a *prima facie* case of obviousness.

For at least this reason, Claims 5-8 and 14-17 are allowable over the applied art, taken singly or in combination. Withdrawal of the rejection is respectfully requested.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance of the application is earnestly solicited.

3 80 U.S.P.Q. (BNA) 448 (Bd. App. 1948).

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Should Examiner Le believe anything further would be desirable in order to place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

It is believed that any additional fees due with respect to this paper have already been identified. However, if any additional fees are required in connection with the filing of this paper, permission is given to charge account number 50-1612 in the name of Warn, Hoffmann, Miller & LaLone, P.C.

Respectfully submitted,

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SIGNATURE OF PRACTITIONER

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